MAJLIS BANDARAYA SUBANG JAYA v. LEMBAGA RAYUAN NEGERI SELANGOR & ANOR

HIGH COURT MALAYA, SHAH ALAM
SHAHNAZ SULAIMAN J
[JUDICIAL REVIEW NO: BA-25-39-07-2023]
24 JULY 2025

Abstract – *When exercising its authority under the Town and Country Planning Act 1976 to consider a planning permission application, a planning authority must consider all relevant factors, including the previously approved layout plan, even if it is dated, as it does not have an expiry date. The authority must not consider irrelevant factors, such as the opinion of a body that no longer has jurisdiction over the matter. The failure to consider relevant factors, and then considering irrelevant ones, may render the decision legally flawed and be subject to judicial review on the grounds of irrationality. Furthermore, the authority has a duty to provide sufficient and reasoned justification for its decisions.*

ADMINISTRATIVE LAW: *Judicial review – Certiorari – Application for judicial review to quash decision of public authority ('Appeal Board') – Developer of land obtained approval for layout plan for development of land – Lots designated for construction of petrol station, food stalls and surau – Current registered proprietor of land submitted application to local authority for planning permission to develop commercial columbarium on land – Application rejected by local authority – Registered owner appealed to Appeal Board – Appeal Board decided in favour of registered owner – Whether decision of Appeal Board flawed – Whether failed to take into consideration relevant factors – Whether tainted with irrationality – Whether Appeal Board required to furnish reasons for decision – Rules of Court 2012, O. 53*

LOCAL GOVERNMENT: *Local authority – Town-planning – Developer of land obtained approval for layout plan for development of land – Lots designated for construction of petrol station, food stalls and surau – Current registered proprietor of land submitted application to local authority for planning permission to develop commercial columbarium on land – Application rejected by local authority – Registered owner appealed to Appeal Board – Appeal Board decided in favour of registered owner – Whether proposed development reflected approved layout plan – Whether approved layout plan in line with local plan – Whether there was expiry to layout plan – Town and Country Planning Act 1976, ss. 22(2)(bb) & 23(1)(a)*

In 1992, Pinwang Sdn Bhd, the then proprietor and developer of a land ('land'), had obtained approval for a layout plan pertaining to the development of the said land. The lots were designated for the construction of a petrol station, food stalls and a surau. In 1997, the applicant assumed

the responsibility, for regulating, controlling and planning the development and use of land and buildings within the area in which the land was located, from PLANMalaysia Selangor. In 2022, the second respondent, the current registered proprietor of the land, submitted an application to the applicant for planning permission to develop a commercial columbarium on the land. The application was rejected on the grounds that: (i) the proposed commercial columbarium was inconsistent with the approved layout plan; and (ii) there was a pressing need to develop food stalls to serve the factory workers in the area and its surrounding vicinity. The second respondent appealed to the first respondent and the appeal was allowed for the following reasons: (i) the applicant's reliance on the relevant statutory provisions under the Town and Country Planning Act 1976 ('Act'), in rejecting the second respondent's application, was misplaced; (ii) the justification that there was an urgent need to construct food stalls to serve factory workers in the vicinity of the land was unreasonable; and (iii) PLANMalaysia Selangor, by way of a letter, expressed no objection to the proposed development, subject to compliance with certain conditions ('PLANMalaysia's letter'). The first respondent, in its decision, dismissed the arguments advanced by the applicant as merely 'tidak wajar'. Hence, the present application by the applicant, for judicial review, to quash the first respondent's decision.

Held (allowing application):

(1) Section 22(2)(bb) of the Act provides that, when considering an application for planning permission, the local planning authority shall take into account any matters it deems expedient or necessary for proper planning, including, in particular the development proposal report. The development proposal report includes or contains the layout plan. The provisions of the Act do not state that there is an expiry date for the layout plan. As such, it could not be said that the layout plan approved, *albeit* years ago, was no longer relevant. Hence, the layout place could be considered in an application for planning permission. The layout plan was approved in 1992 and, as there was no amendment to it, the layout plan stands. (paras 28-30)

(2) At the material time, PLANMalaysia did not have powers to approve applications for planning permissions as the function was relinquished to the applicant. The PLANMalaysia letter might or could have influenced the decision of the first respondent when it not ought to have sought PLANMalaysia's view given that that function had been surrendered to the applicant. The conduct of the first respondent, in obtaining the letter from PLANMalaysia, was irrational. (para 38)

(3) There was no conflict between the local plan and the layout plan. There were other categories in the local plan and an express condition that the categories of land use were subject to the approved layout plan. The first

respondent, in arriving at its decision, failed to consider that the proposed development was incompatible with the approved layout plan. (paras 33 & 51)

(4) The first respondent failed to provide reasons when there was an express duty to do so. Merely stating 'tidak wajar' was insufficient. The first respondent's decision was legally flawed as the first respondent failed to consider relevant factors while taking into account irrelevant ones. This was further vitiated by irrationality, amounting to what was commonly referred to as the *Wednesbury* unreasonableness. An order of *certiorari* to quash the decision of the first respondent, which allowed the appeal of the second respondent, was made. (paras 56 & 57)

Case(s) referred to:

Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal [2018] 2 CLJ 513 FC ***(refd)***

Associated Provincial Picture Houses, Limited v. Wednesbury Corporation [1948] 1 KB 223 ***(refd)***

BU Developments Sdn Bhd v. Selangor Appeal Board & Ors [2014] 8 MLJ 539 ***(refd)***

Chye Chin Joon & Ors v. Majlis Perbandaran Seberang Perai, Pulau Pinang & Ors [2022] CLJU 928; [2022] 1 LNS 928 HC ***(refd)***

Dato' Seri Dr Ahmad Zahid Hamidi, Menteri Dalam Negeri Kementerian Dalam Negeri & Ors v. Soo Lina & Ors [2018] 6 CLJ 285 CA ***(refd)***

Datuk Justine Jinggut v. Pendaftar Pertubuhan [2012] 1 CLJ 825 CA ***(refd)***

Malaysian Oxygen Bhd v. Soh Tong Wah & Another Appeal [2015] 1 CLJ 191 CA ***(refd)***

Minister Of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 SC ***(refd)***

Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah Dan Galian, Selangor & Anor [2016] 5 CLJ 250 CA ***(refd)***

Perbadanan Pengurusan Sunrise Garden Kondominium v. Sunway City (Penang) Sdn Bhd & Ors And Another Appeal [2023] 2 CLJ 333 FC ***(refd)***

Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors [2021] 2 CLJ 808 CA ***(refd)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA ***(refd)***

The Store (M) Sdn Bhd v. Ang Tin Huat & Anor [2015] 2 CLJ 859 HC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 53

Town and Country Planning Act 1976, ss. 21(1), (3), (4), (5), 21A, 21B(2), (3), 21C, 22(2)(bb), 23(1)(a), 36

For the applicant - Melanie Lim Sheng Ning; M/s Raja, Darryl & Loh
For the 1st respondent - Etty Eliany Tesno Kamar; FC
For the 2nd respondent - Aliff Benjamin Suhaimi & See Hau Tsien; M/s Thomas Philip

Reported by Najib Tamby

JUDGMENT

Shahnaz Sulaiman J:

Introduction

[1] This application for judicial review seeks to obtain an order for *certiorari*.

[2] This matter concerns the proposed development of land held under Lot 109 and Lot 111, located at Jalan TPP 6/9, Taman Perindustrian Puchong, Mukim Petaling, Daerah Petaling, Selangor Darul Ehsan ("the land"). The second respondent, Uni-Source (the developer), submitted an application for planning permission to construct a commercial columbarium on the land. The applicant rejected the application. Dissatisfied with the decision, Uni-Source lodged an appeal with the appeal board pursuant to s. 23(1)(a) of the Town and Country Planning Act 1976 ("TCPA"). The Appeal Board allowed the appeal on 21 March 2022 ("the impugned decision"). This impugned decision is the subject matter of this application for judicial review.

Reliefs Sought

[3] This judicial review seeks to obtain an order for a *certiorari* for the court to quash the decision of the respondent which allowed the appeal of Uni-Source Indentors Sdn Bhd ("Uni-Source") on 21 March 2023, in relation to Uni-Source's application for planning permission concerning a proposed commercial columbarium development on Lot 109 and Lot 111, Jalan TPP 6/9, Taman Perindustrian Puchong, Mukim Petaling, District of Petaling, Selangor Darul Ehsan;

Factual Background

[4] The applicant is a local authority established in 1997 pursuant to the Local Government Act 1976. It has jurisdiction over, and serves as the planning authority for, developments within various areas including Puchong, where the land is located.

[5] The appeal board was established under s. 36 of the Town and Country Planning Act 1976 ("TCPA").

[6] On or about 10 December 1992, Pinwang Sdn Bhd, the then proprietor and developer of the land, obtained approval for a layout plan pertaining to the development of the land. Lot 109 was designated for the construction of a petrol station, whilst Lot 111 was designated for the development of food stalls ("gerai"). The adjacent plot to the land was designated for the construction of a mosque ("surau").

[7] On or about 2 January 1997, the applicant assumed the responsibility for regulating, controlling, and planning the development and use of land and buildings within the area in which the land is located from PLANMalaysia Selangor.

[8] In or around January 2022, Uni-Source, the current registered proprietor of the land, submitted an application to the applicant for planning permission to develop a commercial columbarium on the land. A columbarium is a structure intended for storing funerary urns containing cremated remains.

[9] The applicant rejected Uni-Source's application for planning permission on, among others, the following grounds:

(i) the proposed commercial columbarium is inconsistent with the approved layout plan; and

(ii) there is a pressing need to develop food stalls ("gerai") on Lot 111 to serve the factory workers in Taman Perindustrian Puchong and its surrounding vicinity.

[10] On 22 April 2022, Uni-Source filed an appeal with the appeal board against the applicant's decision. The appeal board allowed the appeal. The reasons for the appeal board's decision were as follows:

(i) the applicant's reliance on the relevant statutory provisions under the Town and Country Planning Act 1976 (TCPA) in rejecting Uni-Source's planning permission application was deemed to be misplaced;

(ii) the justification that there was an urgent need to construct food stalls ("gerai") to serve factory workers in the vicinity of the land was considered unreasonable; and

(iii) PLANMalaysia Selangor had no objection to the proposed development, subject to compliance with certain conditions.

[11] On 6 July 2023, the applicants filed this application for judicial review to challenge the impugned decision.

Principles Relating To Judicial Review

[12] Prior to considering and analysing this application, it would be prudent for this court to reflect on the legal principles relating to judicial review. Order 53 Rules of Court 2012 provides the procedures in an application for judicial review. It is trite that the decision of a public authority may be reviewed by this court on the grounds of illegality, irrationality, procedural impropriety or disproportionality. This review is not confined to the decision-making process but also to the merits of the decision.

[13] In the Federal Court case, *Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal* [2018] 2 CLJ 513; [2018] 2 MLJ 537, the liberal approach on judicial review in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 has been re-emphasised at pp. 547 to 548 (CLJ); pp. 571 to 572 (MLJ) as follows:

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> [45] In the same appeal, Edgar Joseph Jr FCJ (Eusoff Chin in agreement) said that an award could be reviewed for substance as well as for process:
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> > It is often said that judicial review is concerned not with the decision but the decision making process. (See *eg Chief Constable of North Wales Police v. Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in Judicial Review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.
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> > But Lord Diplock's other grounds for impugning a decision susceptible to Judicial Review make it abundantly clear that such a decision is also open a challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinise such decisions not only for process, but also for substance.
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> > In this context, it is useful to note how Lord Diplock (at pp. 410-411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:
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> > > By 'illegality' as a ground for Judicial Review, I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
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> > > By 'irrationality', I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts'
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> exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] AC 14, or irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review.
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> I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.
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> Lord Diplock also mentioned 'proportionality' as a possible fourth ground of review which called for development.

[14] See also: *Minister of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186.

[15] The meaning of the error of law has also been explained in the case of *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748; [1995] 2 MLJ 317 in the following words:

> It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be safely said that an error of law would be disclosed if the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed an Anisminic error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.

Analysis And Findings

Proposed Development Does Not Reflect The Approved Layout Plan

[16] The applicant contended that pursuant to ss. 21A and 21B of the TCPA, an application for planning permission must be accompanied by an approved layout plan. The applicant argued that the argument that a proposed development need not conform to the layout plan on the basis that a layout plan is not a 'statutory document' is unfounded. It is evident that any application for planning permission must include a layout plan, as required under s. 21B of the Town and Country Planning Act 1976 (TCPA). See: *Chye Chin Joon & Ors v. Majlis Perbandaran Seberang Perai, Pulau Pinang & Ors* [2022] CLJU 928; [2022] 1 LNS 928.

[17] In this case, the applicant contended that the approved layout plan allowed only for a petrol station and food stalls, and it was never amended. Since a commercial columbarium was not included in the approved plan, planning permission for it cannot be granted. Compliance with the approved layout plan is a mandatory precondition for planning permission.

[18] The applicant argued that by overturning the applicant's decision, the appeal board effectively granted planning permission for a commercial columbarium without prior layout approval. Such an outcome was not envisaged by the legislation. Any proposed development should undergo a proper assessment in accordance with the requirements outlined in s. 21B of the TCPA.

[19] The first respondent argued that the second respondent submitted a planning permission application in January 2022 to develop a commercial columbarium on Lots 109 and 111 at Jalan TPP 6/9, Taman Perindustrian Puchong. The lands belong to the second respondent. The applicant rejected the application on the grounds that: (i) the proposed development conflicted with the approved layout plan, which designated Lot 109 for a petrol station and Lot 111 for food stalls; and (ii) there was an urgent need for food stalls on Lot 111 to serve nearby factory workers.

[20] The first respondent argued that the required plans submitted with a planning permission application under s. 21(1) TCPA must align with any directions issued by the planning authority. If amendments are directed, the applicant must revise and resubmit the plan within the specified time as per sub-ss. 21(4) and 21(5). However, the first respondent contends that the plan under s. 21(1) of TCPA does not include the layout plan. Instead, s. 21A of TCPA requires the separate submission of a layout plan as part of the development proposal. Under s. 21B of TCPA, the layout plan must comply with legal requirements and may be subject to amendments directed by the local authority. Thus, the layout plan is prepared by the applicant and forms an integral part of the planning permission process.

[21] The second respondent argued that the applicant's reliance on the purported layout plan is misplaced, as it does not override statutory development plans like the local or structure plan, and therefore cannot form the basis for deciding the planning permission application.

[22] The second respondent asserts that statutory development plans, such as the SJLP 2035, which are gazetted under planning laws like the TCPA, are legally binding and must guide planning decisions. These plans reflect public participation and democratic processes. In contrast, layout plans like the purported layout plan, although recognised under the TCPA, do not carry the same legal weight and are not binding on planning authorities. Therefore, the applicant must base its decision on the SJLP 2035, not the purported layout plan.

[23] It was submitted by the second respondent that in deciding the application for planning permission, the applicant must solely consider and comply with the SJLP 2035, ensuring the proposed development aligns with its provisions and does not conflict with them.

[24] To consider this issue, this court made reference to the relevant provisions of the TCPA. Sections 21, 21A and 21B of the TCPA are reproduced below:

> 21. (1) An application for planning permission in respect of a development shall be made to the local planning authority and shall be in such form and shall contain such particulars and be accompanied by such documents, plans, and fees as may be prescribed.
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> (2) If the applicant is not the owner of the land on which the development is to be carried out, the written consent of the owner thereof to the proposed development shall be obtained and endorsed on the application.
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> (3) Where the development involves the erection of a building, the local planning authority may give written directions to the applicant in respect of any of the following matters, that is to say:
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> (a) the level of the site of the building;
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> (b) the line of frontage with neighbouring buildings;
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> (c) the elevations of the building;
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> (d) the class, design, and appearance of the building;
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> (e) the setting back of the building to a building line;
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> (f) access to the land on which the building is to be erected; and
> (g) any other matter that the local planning authority considers necessary for purposes of planning.
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> (4) The applicant to whom any written directions are given under subsection (3) shall amend the plan submitted with his application accordingly and resubmit the plan within such period or extended period as the local planning authority may specify.
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> (5) If the plan is not resubmitted within the specified period or extended period, the application for planning permission shall be deemed to have been withdrawn but the applicant may submit a fresh application.
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> (6) If the proposed development is located in an area in respect of which no local plan exists for the time being, then, upon receipt of an application for planning permission, or, where directions have been given under subsection (3), upon compliance with the directions, the local planning authority shall, by notice in writing served on the owners of the neighbouring lands inform them of their right to object to the application and to state their grounds of objection within twenty-one days of the date of service of the notice.

(7) If objections are received pursuant to subsection (6), the local planning authority shall, within thirty days after the expiry of the period within which objections may be made, hear –

(a) the applicant for planning permission; and

(b) any person who has lodged an objection pursuant to subsection (6) and who, in lodging the objection, has requested a hearing.

(8) In this section, "neighbouring lands" means –

(a) lands adjoining the land to which an application under this section relates;

(b) lands separated from the land to which an application made under this section relate by any road, lane, drain or reserved land the width of which does not exceed 20 metres and which would be adjoining the land to which the application relates had they not been separated by such road, lane, drain or reserved land

(c) lands located within a distance of 200 metres from the boundary of the land to which an application under this section relates if the access road to the land to which the application relates is a cul-de-sac used by the owners of the lands and owners of the land to which the application relates.

21A. (1) In addition to the documents and plans required to be submitted under subsection 21(1) for planning permission, the applicant shall submit a development proposal report which shall contain the following:

(a) the development concept and justification;

(b) a location map and a site plan;

(c) particulars of land ownership and restrictions, if any;

(d) (i) a description of the land including its physical environment, topography, landscape, geology, contours, drainage, water bodies and catchments and natural features thereon;

(ii) a survey of the trees and all forms of vegetation; and

(iii) particulars of a building, which may be affected by the development;

(e) a land use analysis and its effect on the adjoining land;

(ea) an analysis of and mitigation measures for the social impact and other impacts as determined by the local planning authority;

(f) layout plans, the details of which are specified in section 21B; and

(g) such other matters as may be prescribed by the local planning authority. (1A) (Deleted by Act A1522). (2) The State Authority may, by rules, exempt any development or class, type or category of development from submitting – (a) a development proposal report under subsection (1); or (b) a development proposal report containing any of the matters specified in paragraphs (1)(a) to (g).

21B. (1) The layout plans under paragraph 21A(1)(f) shall show the proposed development and in particular –

(a) where the development is in respect of any land –

(i) measures for the protection and improvement of its physical environment;

(ii) measures for the preservation of its natural topography;

(iii) measures for the improvement of its landscape;

(iv) measures for the preservation and planting of trees thereon;

(v) the location and species of trees with a girth exceeding 0.8 metre and other vegetation thereon;

(vi) the making up of open spaces;

(vii) the proposed earthworks, if any; and

(viii) a description of the works to be carried out; and

(b) where the development is in respect of a building with special architecture or historical interest, particulars to identify the building including its use and condition, and its special character, appearance, make and feature and measures for its protection, preservation and enhancement; and

(c) where the development involves a building operation, particulars of the character and appearance of buildings located in the surrounding area.

(2) The local planning authority may give directions to an applicant for planning permission in respect of matters concerning his layout plans as the local planning authority considers necessary.

(3) The applicant to whom directions are given under subsection (2) shall amend the layout plans accordingly, and resubmit the layout plans within such period or extended period as the local planning authority may specify.

(4) If the layout plans are not resubmitted within the specified period or extended period, the application for planning permission shall be deemed to have been withdrawn but the applicant may submit a fresh application.

[25] Section 21 of the TCPA provides an application for planning permission from the local planning authority using the prescribed format, and it must include necessary details, documents, plans, and fees. In addition to the documents and plans required under s. 21(1) of the TCPA for a planning permission application, the applicant must also submit a development proposal report, which must include layout plans as detailed in s. 21B of the TCPA.

[26] Subsections 21(4) and (5) of the TCPA relate to the amendments of the plan submitted where written directions are given by the local planning authority under s. 21(3) of the TCPA. It is clear from the facts of this case that sub-ss. 21(4) and (5) of the TCPA do not apply as there were no written directions given by the applicant to the second respondent and the second respondent did not apply to amend the approved layout plan.

[27] Moreover, s. 21C of the TCPA provides that the layout plan shall be prepared by persons entitled to do so under any written law. Here it was Pinwang Sdn Bhd who submitted the approved layout plan.

[28] The provisions of the TCPA do not state that there is an expiry date for the layout plan. As such, it cannot be said that the layout plan approved *albeit* years ago is no longer relevant.

[29] Section 22(2)(bb) of the TCPA provides that when considering an application for planning permission, the local planning authority shall take into account any matters it deems expedient or necessary for proper planning, including, in particular, the development proposal report. The development proposal report includes or contains the layout plan. Hence, the layout plan can be considered in an application for planning permission.

[30] The layout plan in this case was approved in 1992, and as there is no amendment to this layout plan, this layout plan stands.

[31] The applicant, the planning authority, ought to consider the layout plans when considering the planning permission. This is to ensure the layout plan does not supersede the local plan. It is therefore is necessary for the planning authority to consider the layout plan.

[32] See: *Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors* [2021] 2 CLJ 808; [2021] 3 MLJ 1 on the importance of the local plan in considering the application for planning permission.

[33] This court finds no conflict between the local plan and the layout plan. There were other categories in the local plan and an express condition that the categories of land use were subject to the approved layout plan.

Irrational Reliance On The Letter From PLANMalaysia Selangor

[34] According to the applicant, PLANMalaysia Selangor no longer had authority to approve planning permissions at the relevant time, as this responsibility had been transferred to the applicant. The appeal board placed undue reliance on a letter dated 25 February 2022, despite its lack of authority.

[35] To support this contention, the applicant cited the case of *BU Developments Sdn Bhd v. Selangor Appeal Board & Ors* [2014] 8 MLJ 539 where the High Court quashed the Selangor Appeal Board's decision due to, among others, that it placed undue weight on matters which was not required to be considered. The High Court stated:

A … Finally, the decision of the Selangor Appeal Board is flawed in the sense that it is also based on considerations which have been accorded undue weight and which on the evidence appears to be illogical and arbitrary.

[36] The second respondent argued that the first respondent has rightly
B relied, among other things, on the letter from PLANMalaysia Selangor dated 25 February 2022, which stated its lack of objection to the proposed development. In this regard, it was submitted that PLANMalaysia Selangor rightly adopted the correct position in that letter concerning the express land title classifications and conditions of the subject lands, as well as the zoning
C and provisions under the SJLP 2035.

[37] It was further submitted by the second respondent that the first respondent based the impugned decision primarily on the SJLP 2035 provisions and the land use under the land titles, not solely on the PLANMalaysia Selangor letter. Therefore, the applicant's claim that undue
D weight was given to the letter is unfounded.

[38] The fact is that at the material time PLANMalaysia did not have the powers to approve applications for planning permissions. This is because the function was relinquished to the applicant. While it was argued by the second respondent that the first respondent made the decision not purely or solely
E based on PLANMalaysia's letter, it cannot be denied that the PLANMalaysia letter might or could have influenced the decision of the first respondent when the first respondent not ought to have sought PLANMalaysia's view, given that function had been surrendered to the applicant. This court is satisfied that the conduct of the first respondent in
F obtaining the letter from PLANMalaysia is irrational.

Approved Layout Plan In Line With Local Plan

[39] The applicant submitted that the approved layout plan aligns with the provisions of the local plan. According to the local plan, the land is situated
G within an area designated as "Perniagaan". This designation permits land uses such as the construction of petrol stations and food stalls.

[40] Secondly, while the local plan also allows for "Perkuburan", it clearly states that any land use or class of activity must conform to the approved layout plan.

H **[41]** The permitted class use of land, which reflects the approved layout plan, is "Pusat Makanan" and "Stesen Minyak & Gas", not a commercial columbarium.

[42] The applicant argued that the first respondent, in making the impugned
I decision, has failed to take into consideration that the proposed development is inconsistent with the layout plan, which is a statutory document.

[43] The first respondent argued that the plan referred to under sub-s. 21(1) of the TCPA does not include the layout plan. This is because, based on a reading of s. 21A of the TCPA, the applicant is required to submit the layout plan separately as part of the development proposal, in addition to the plan under sub-s. 21(1). At this stage, in applying for planning permission, an applicant must submit the necessary documents, including the plan and development proposal, which encompasses the layout plan.

[44] The layout plan, being part of the development proposal, must comply with the requirements under s. 21B(1) of TCPA. Furthermore, the local planning authority may issue directions, and amendments to the layout plan may be made in accordance with sub-ss. 21B(2) and 21B(3) of TCPA.

[45] The first respondent submitted that any plan or layout plan for purposes of planning permission is prepared by the applicant to the planning authority. The first respondent also maintains that the layout plan does not constitute a statutory notice and it is not required to be gazetted before it can be referred to. Accordingly, the applicant's rejection of the planning permission on the basis that the proposal contravenes the layout plan is both legally and factually incorrect.

[46] The second respondent argued that the conditions imposed on the second respondent to build the stalls were premised on the purported layout plan which is no longer applicable and relevant for the second respondent's application for planning permission. Hence, any requirement and/or condition to construct the stalls based on the purported layout plan cannot be imposed on the second respondent in relation to the application for planning permission.

[47] It was contended by the second respondent that the SJLP 2035 is a statutory development plan (*ie*, a local plan for all areas in Subang Jaya gazetted pursuant to the s. 15(4) of TCPA) which had gone through numerous public consultation process whereas the layout plan does not have the same binding and legal effect the TCPA in recognising the layout plans. Moreover, the second respondent's layout plan which was submitted for the said application is also consistent with the SJLP 2035 which allows for the development/construction of commercial cemeteries and crematoriums. See: *The Store (M) Sdn Bhd v. Ang Tin Huat & Anor* [2015] 2 CLJ 859; [2016] 9 MLJ 517.

[48] In the view of this court, the approved layout plan is consistent with the provisions of the local plan. Under the local plan, the land is located within an area zoned as "Perniagaan" (Commercial), which permits uses such as petrol stations and food stalls.

[49] Although the local plan does include "Perkuburan" (burial grounds) as a permissible use, it expressly provides that any land use or category of activity must be in accordance with the approved layout plan.

[50] The land use classes permitted under the approved layout plan are "Pusat Makanan" (Food Centre) and "Stesen Minyak & Gas" (Petrol and Gas Station), and not a commercial columbarium. There is no mention of a commercial columbarium.

[51] In the view of this court, when the first respondent came to the impugned decision, the first respondent failed to consider that the proposed development is incompatible with the approved layout plan.

Failure To Consider The Needs And Interests Of The Public

[52] Before the appeal board, the applicant contended that there was a need to develop licensed food stalls on the land due to the growing number of unlicensed and unauthorised food stalls and restaurants operating in the surrounding area. The applicant also emphasised that permitting the construction of a commercial columbarium on the land would be unreasonable, particularly since a neighbouring plot had already been approved for the development of a mosque. However, the appeal board, in its decision, dismissed these arguments as merely "tidak wajar".

[53] The applicant argued that no proper reasons were given as to why the appeal board was of the view that the arguments taken were unreasonable. Rule 10(j) of the Rules of the Appeal Board 1999 provides that full grounds must be given by the Appeal Board. See: *Datuk Justine Jinggut v. Pendaftar Pertubuhan* [2012] 1 CLJ 825; [2012] 3 MLJ 212 and *Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah Dan Galian Selangor & Anor* [2016] 5 CLJ 250; [2016] 2 MLJ 495.

[54] According to the applicant, the decision to allow a commercial columbarium to be developed next to a mosque would be "at variance with reason and common sense".

[55] This was argued to be the ground of irrationality and unreasonableness as per *Associated Provincial Picture Houses, Limited v. Wednesbury Corporation* [1948] 1 KB 223. See also: *Malaysian Oxygen Bhd v. Soh Tong Wah & Another Appeal* [2015] 1 CLJ 191; [2015] 3 MLJ 730; *Dato' Seri Dr Ahmad Zahid Hamidi, Menteri Dalam Negeri Kementerian Dalam Negeri & Ors v. Soo Lina & Ors* [2018] 6 CLJ 285; [2018] 2 MLJ 738; *Perbadanan Pengurusan Sunrise Garden Kondominium v. Sunway City (Penang) Sdn Bhd & Ors And Another Appeal* [2023] 2 CLJ 333; [2023] 2 MLJ 621.

[56] This court opines that the appeal board failed to provide reasons when there was an express duty to do so. Merely stating 'tidak wajar' in the view of this court is insufficient.

Conclusion

[57] This court is satisfied that the applicant is entitled to the reliefs sought in this judicial review against the decision of the appeal board. The impugned decision is legally flawed, as the first respondent failed to consider relevant

factors while taking into account irrelevant ones. It is further vitiated by irrationality, amounting to what is commonly referred to as *Wednesbury* unreasonableness. For the aforementioned reasons, this court is satisfied that this case requires judicial intervention.

[58] This court therefore allows this application for judicial review. An order of *certiorari* to quash the decision of the first respondent which allowed the appeal of Uni-Source Indentors Sdn Bhd ("Uni-Source") on 21 March 2023 relating to Uni-Source's application for planning permission in respect of a proposed development of a commercial columbarium on Lot 109 and Lot 111 at Jalan TPP 6/9, Taman Perindustrian Puchong, Mukim Petaling, Daerah Petaling, Selangor Darul Ehsan is made. Costs of RM3,000 to be paid by each respondent. For the second respondent, costs are subject to the allocator.